

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2003-018673

01/06/2005

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
D. Raybon  
Deputy

FILED: 01/11/2005

BARRY DAVIS

GEOFFREY M TRACHTENBERG

v.

REBECCA PATTON, et al.

PETER A BOYLE

PATRICIA E NOLAN

MINUTE ENTRY

The Court has considered Defendant Patton's Motion to Clarify Arbitration Award for Purposes of Trial. The Court finds and rules as follows:

The issue presented appears to be novel. Ariz.R.Civ.P. 58(b), dealing with remittitur from a verdict or judgment, is not facially inconsistent with the Arbitration Rules, Ariz.R.Civ.P. 72 *et. seq.* Consequently, there is no bar to considering whether Rule 58(b) applies to this case. Ariz.R.Civ.P. 72(a). The question remains, whether the procedure followed in this case was a remittitur.

Rule 75(a) makes the conclusion of an arbitration proceeding a two-stage process. First, the arbitrator renders a decision and notifies the parties in writing. Within ten days, either party may submit a proposed form of order, including any form of award for attorneys' fees and costs. The other party may then object. Within ten days of receiving the objections, if any, the arbitrator rules and files one signed original award or other final disposition with the Clerk of the Court. This latter filing terminates the arbitrator's responsibility and if appealed by one of the parties, places the matter within the jurisdiction of the Superior Court. This is "somewhat" analogous to the judgment of a court. (In comparison, post-judgment remittitur is initially in the jurisdiction of the trial court, due to its greater familiarity with the case. *Creamer v. Troiano*, 108 Ariz. 573, 576-77 (1972). This, however, is a procedural rule with no application to the arbitration context.) However, a remittitur need not be offered only after a judgment has been rendered. Rule 58(b) provides that a remittitur may be offered to reduce a verdict, before entry of final judgment.

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Can the Notice of Decision issued by the arbitrator be analogized to the verdict of a jury? It would seem not. A jury's verdict, once rendered, cannot be revisited by that jury. It is final, subject only to further action by the trial court. Rule 75(a), on the other hand, expressly provides that the arbitrator may consider objections to the Notice of Decision, and if appropriate modify that decision in the final Award. Unlike the situation with a verdict or a judgment, in which jurisdiction is transferred to the next level, the arbitrator retains jurisdiction after issuing the Notice of Decision until submission of the Award or other final disposition to the court. The Notice of Decision therefore lacks the requisite finality to permit invocation of the remittitur procedure. Thus, the Court concludes that Rule 58(b) does not apply to arbitrations and the amount in controversy based on the arbitration award for purpose of trial is \$12,000.00.

THEREFORE, IT IS ORDERED:

- 1) Denying Defendants' Motion to Clarify Arbitration Award.
- 2) Denying both parties' requests for sanctions/attorneys fees.